

## LYNCH ICHIDA THOMPSON KIM & HIROTA

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Attorney for Plaintiff  
**WAYNE BERRY**

IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen; ) **Civ. No. CV03 00385 SOM-LEK**  
Plaintiff, ) **(Copyright)**  
vs. )  
HAWAIIAN EXPRESS SERVICE, ) **SUPPLEMENTAL**  
INC., a California corporation; et al. ) **DECLARATION OF TIMOTHY J.**  
Defendants. ) **HOGAN FILED IN SUPPORT OF**  
 ) **PLAINTIFF WAYNE BERRY'S**  
 ) **OPPOSITIONS TO THE**  
 ) **FLEMING-PCT'S MOTIONS IN**  
 ) **LIMINE NOS. 1 THROUGH 9;**  
 ) **EXHIBIT "O"**  
 )  
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**SUPPLEMENTAL  
DECLARATION OF TIMOTHY J. HOGAN FILED IN  
SUPPORT OF PLAINTIFF WAYNE BERRY'S OPPOSITIONS  
TO THE FLEMING-PCT'S MOTIONS  
IN LIMINE NOS. 1 THROUGH 9; EXHIBIT "O"**

I, TIMOTHY J. HOGAN, am an attorney licensed to practice before all the

courts of Hawaii and I make this declaration under penalty of perjury. All the statements herein are true and correct to the best of my knowledge, information and belief. If called upon to testify regarding the matters contained herein, I am competent and willing to do so. This declaration is filed in support of Mr. Berry's oppositions to the Motions in Limine filed by the PCT.

1. Attached hereto as Exhibit "O" is a true and correct copy of Wayne Berry's Responses to First Set of Interrogatories Propounded to Wayne Berry re: Claim No. 18704 submitted to the PCT in regard to In re Fleming Companies, Inc., Bk. No. 03-10945 (MFW) (Bankr. Del.) (the "Interrogatory Responses").

2. The Interrogatory responses are submitted in further support of Mr. Berry's opposition to the Fleming-PCT's Motions in Limine 1 through 9 but more specifically regarding Motion in Limine No. 1 where Fleming's PCT claims that Mr. Berry was not forthcoming in regard to his answers to interrogatories.

3. Prior to a ruling in the District of Delaware, Fleming had been conducting parallel discovery regarding the basis for Mr. Berry's damages in this case that the Delaware court has ruled would liquidate Mr. Berry's claim in that case. These interrogatories were properly served upon the PCT's counsel on or about January 7, 2005 and are submitted to supplement Mr. Berry's earlier answers to interrogatories that have been submitted in this case and in support of his

opposition to the Fleming-PCT's Motions in Limine.

DATED: Honolulu, Hawai'i, January 17, 2006.

/s/ Timothy J. Hogan  
TIMOTHY J. HOGAN

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Attorney for Plaintiff  
**WAYNE BERRY**

IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen; ) **Civ. No. CV03 00385 SOM-LEK**  
Plaintiff, ) **(Copyright)**  
vs. )  
HAWAIIAN EXPRESS SERVICE, ) **CERTIFICATE OF SERVICE RE:**  
INC., a California corporation; et al. ) **SUPPLEMENTAL DECLARATION**  
Defendants. ) **OF TIMOTHY J. HOGAN FILED**  
 ) **IN SUPPORT OF PLAINTIFF**  
 ) **WAYNE BERRY'S OPPOSITIONS**  
 ) **TO THE FLEMING-PCT'S**  
 ) **MOTIONS IN LIMINE NOS. 1**  
 ) **THROUGH 9; EXHIBIT "O"**  
 )  
 )

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**CERTIFICATE OF SERVICE RE:  
SUPPLEMENTAL  
DECLARATION OF TIMOTHY J. HOGAN FILED IN  
SUPPORT OF PLAINTIFF WAYNE BERRY'S OPPOSITIONS  
TO THE FLEMING-PCT'S MOTIONS IN LIMINE NOS. 1 THROUGH 9**

I hereby certify that on the dates and by the methods of service noted below,

a true and correct copy of the Supplemental Declaration of Timothy J. Hogan Filed in Support of Plaintiff Wayne Berry's Oppositions to the Fleming -PCT's Motions in Limine Nos. 1 Through 9 was served on the following at their last known addresses:

Served Electronically through CM/ECF on January 10, 2006:

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DATED: Honolulu, Hawai'i, January 17, 2006.

/s/ Timothy J. Hogan  
TIMOTHY J. HOGAN  
Attorney for Plaintiff WAYNE BERRY